

REMARKS

Reconsideration of this application is hereby requested.

Applicant first notes with appreciation the indication that a number of claims would be allowable if rewritten in independent form (see numbered section 13 of the Office Action). This has been accomplished through the presentation of new claims 55 to 62, which correspond to the (previously numbered) claims 2, 41 and 47 to 52 indicated as allowable with such rewriting.

With regard to claim numbering; prior claims 3 to 28, which the Office Action indicates as having been renumbered as claims 29 to 54, have now been expressly designated as canceled, in order to prevent any misunderstanding as to whether claims 3 to 28 are or are not still in the case.

Claims 36 and 37 had been rejected under 35 USC 112, second paragraph for reciting in the same claim a broad range together with a narrow range that falls within the broad range. This rejection is respectfully traversed for the following reasons.

The several decisions cited in connection with this rejection do not really support the rejection.

In *Ex Parte Wu*, the rejection for indefiniteness under 35 USC 112 was reversed by the board of Patent Appeals and Interferences. This case involved a claim to a composition of several specific ingredients and "optionally still another ingredient". Both in the initial decision and upon the reconsideration requested by

the examiner, the Board concluded that "the composition... can consist of the first three components recited or it can include... a fourth component. We therefore do not consider the claims to be indefinite as a result of the claimed optional component."

By the same token, a narrow range within the same claim as a broad range simply establishes two alternative criteria for the scope of the claim. This would be no different than having two separate claims, one reciting the broad range and the other reciting the narrow range.

The decision in *Ex Parte Steigerwald* does not appear to deal with narrow versus broad ranges at all. Instead it appears to deal with a disclosure which in part "has not been demonstrated to be a known phenomenon", so that claims dependent upon this disclosure are indefinite and vague. Likewise, the decision states that certain "terms are so broad, vague, indefinite and functional as to render impossible a clear determination of what is intended to be covered by the claims". The matter of narrow versus broad ranges does not appear to be addressed in this decision.

The decision in *Ex Parte Hall* also does not appear to deal with a narrow range within a broad range. Rather, this decision appears to deal with the use of terminology such as "such as". This was held to be indefinite and unduly broad because "it fails to set out the material [being claimed] with sufficient particularity" but covers substances which may or may not be any of those expressly named.

Finally, the decision in *Ex Parte Hasche*, in its pertinent parts, also deals with expressions such as "which may be", "such, for example as", as well as with a failure to define starting materials for the process claims.

In view of all the foregoing, applicant submits that claims 36 and 37 are not indefinite under 35 USC 112, second paragraph.

Incidentally, applicant also notes that the decision in *Ex Parte Wu* expressly refers to the same decision in *Ex Parte Steigerwald* which is cited in the present Office Action and distinguishes *Ex Parte Wu* from *Ex Parte Steigerwald*, stating specifically that the term "optionally" does not always result in the same degree of variability or indefiniteness that might result from the use of the phrase "such as".

Regarding the objection to the phrase "characterized in that", this has been replaced in all the affected claims by the term "wherein", which is believed to be unobjectionable.

Turning now to the rejection of a large group of claims under 35 USC 102 as anticipated by the Lipstein reference, applicant submits that this rejection is not warranted.

The system of Lipstein and that of the present invention represent two substantially different concepts.

As can be seen most readily from Figures 1, 2 and 3 of the Lipstein patent, its system uses a blower to cause "dirty" air to filter through both grease and odor filters and to ultimately escape through an opening 29 located at the front of a

combination cooktop and oven raised above that cooktop's surface.

Filtered air leaves Lipstein's closed circulatory system as a wide, thin jet directly over a turning or "Coanda" tube. This forms a vortex or cyclonic motion on the underside of the raised oven, about 12" above the cooktop surface.

The discharged air then travels beneath the lower surface 10 of the raised oven. It is there and only there that it could be said to have formed an air curtain. No such air curtain is formed above the cooktop and, especially, no such air curtain is formed above and between the opposite ends of the cooktop.

In contrast, the system of the present invention does not involve an oven, but rather specifically a cooktop. Air openings are provided on opposite sides of the cooktop, one air opening being an air outlet and the other an air inlet and both forming part of a closed air circulation system which causes filtered air to flow across the cooktop and thereby form the air curtain 44 above that top.

Applicant's claims, particularly as herein amended, are believed to clearly define the differences between this system and that of Lipstein.

Specifically, claim 1, which is the broadest claim and on which all of the other rejected claims depend, expressly defines the air openings 36, 38, the cooktop 42 between the openings, forming a closed air circulation loop 48 to produce an air curtain 44 between the air opening 36 on an upstream side of the cooktop and the air opening 38 on a downstream side of the cooktop.

Further, the air circulation loop which forms this air curtain has at least one

vertically oriented air channel 40 below the work station (i.e. below cooktop 14) and this vertical air channel 40 is connected to one of the two air openings 36, 38 on opposite sides of the work station (cooktop) 14.

As previously pointed out, these specific features are not found in the Lipstein reference.

There are no air openings in Lipstein which produce an air curtain immediately above the cooktop, no such air openings are located on an upstream side and a down stream side of a cooktop, respectively, and there is no vertical air channel below the cooktop connected to (non-existing) air openings on opposite sides of the cooktop.

Thus, amended claim 1 is believed to be allowable over the Lipstein reference.

The remaining rejected claims are all dependent upon amended claim 1 discussed above and are therefore believed to be allowable for the same reasons as their common parent claim.

Regarding the rejections and other matters under 35 USC 103, it is pointed out that the application does not in fact name joint inventors, but only a single inventor: Max Maier. Perhaps confusion arose from the fact that, in the PCT parent application from which the present U.S. application stems, there was named a company as the applicant. However, that is due to the common practice of naming a company -- rather than the individual inventor -- as the applicant in foreign-origin

applications.

As for the rejection of claims 30 to 32, 36 and 37 (see numbered sections 11 and 12 of the Office Action) these are believed to be unwarranted because the distinguishing features previously discussed with respect to the rejection under 35 USC 102 also apply to those rejections and are not negated by the comments made in the rejections under 35 USC 103.

In view of all the foregoing, this application is now believed to be in condition for allowance and corresponding action is hereby solicited.

Respectfully submitted,

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